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FILE: [Redacted]
EAC 04 166 53553

Office: VERMONT SERVICE CENTER

Date: **AUG 16 2006**

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

PETITION: Immigrant Petition for Alien Worker as an Alien of Extraordinary Ability Pursuant to Section 203(b)(1)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(A)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner seeks to classify the beneficiary as an employment-based immigrant pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A), as an alien of extraordinary ability. The director determined the petitioner had not established that the beneficiary has earned the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability.

On appeal, counsel argues that the beneficiary “has previously demonstrated and has currently demonstrated that he qualifies as an alien with extraordinary ability.”

Section 203(b) of the Act states, in pertinent part, that:

(1) Priority Workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):

(A) Aliens with Extraordinary Ability. -- An alien is described in this subparagraph if --

- (i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,
- (ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and
- (iii) the alien's entry to the United States will substantially benefit prospectively the United States.

As used in this section, the term “extraordinary ability” means a level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the field of endeavor. 8 C.F.R. § 204.5(h)(2). The specific requirements for supporting documents to establish that an alien has sustained national or international acclaim and recognition in his or her field of expertise are set forth in the regulation at 8 C.F.R. § 204.5(h)(3). The relevant criteria will be addressed below. It should be reiterated, however, that the petitioner must show that the beneficiary has earned sustained national or international acclaim at the very top level.

This petition, filed on April 29, 2004, seeks to classify the beneficiary as an alien with extraordinary ability as a “Squash Instructor.” The beneficiary has been working for the ██████████ in that capacity since June 1998. In such a situation, where the beneficiary has had ample time to establish a reputation as an instructor or a coach, he must show that he has earned sustained national or international acclaim based on his achievements as a coach rather than his prior reputation as a competitive athlete.

The regulation at 8 C.F.R. § 204.5(h)(5) requires the beneficiary to “continue work in the area of expertise.” The majority of the documentation submitted by the petitioner relates to the beneficiary’s accomplishments as a Zambian squash player in the 1980’s. The beneficiary, however, intends to work as an instructor and a coach in the United States. While a player and a coach certainly share knowledge of the sport, the two rely on very different sets of basic skills. Thus, competitive athletics and coaching are not the same area of expertise. This interpretation has been upheld in Federal Court. In *Lee v. I.N.S.*, 237 F. Supp. 2d 914 (N.D. Ill. 2002), the court stated:

It is reasonable to interpret continuing to work in one’s “area of extraordinary ability” as working in the same profession in which one has extraordinary ability, not necessarily in any profession in that field. For example, Lee’s extraordinary ability as a baseball player does not imply that he also has extraordinary ability in all positions or professions in the baseball industry such as a manager, umpire or coach.

Id. at 918. The court noted a consistent history in this area. Thus, while the beneficiary’s accomplishments as a squash player are not irrelevant and will be considered below, ultimately he must demonstrate sustained national or international acclaim as a coach or an instructor.

The regulation at 8 C.F.R. § 204.5(h)(3) indicates that an alien can establish sustained national or international acclaim through evidence of a one-time achievement (that is, a major, international recognized award). Barring the alien’s receipt of such an award, the regulation outlines ten criteria, at least three of which must be satisfied for an alien to establish the sustained acclaim necessary to qualify as an alien of extraordinary ability. The petitioner has submitted evidence pertaining to the following criteria.

Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor.

The petitioner submitted correspondence from the Zambia Squash Association stating that the beneficiary was a Mauritius Open Champion in 1983, Zambia Close Champion in 1986, Zambia Sportsman of the Year in 1986, and the East and Central Africa Champion in 1988 and 1989. The preceding awards won by the beneficiary, however, relate to his accomplishments as a squash competitor, not as a coach or an instructor. Further, there is no evidence showing that the beneficiary has earned prizes or awards at the national or international level since the 1980’s, fifteen years prior to the filing date of this petition. As such, the preceding awards cannot be considered evidence of his *sustained* national or international acclaim.

It is not clear that significant awards exist for squash instructors; however, nationally or internationally recognized prizes or awards won by players coached by the beneficiary may be considered as comparable evidence for this criterion pursuant to 8 C.F.R. § 204.5(h)(4). Here, it is important to evaluate the level at which the beneficiary acts as a coach. A coach who has established a successful history of coaching top athletes who win titles at the national level or above has a credible claim under this visa classification; a coach of intermediates or junior-level athletes does not.

[REDACTED] General Manager, [REDACTED], states:

[The beneficiary] has done a fabulous job for our program for the past seven years he has worked for us. Our program has averaged well over two hundred juniors of all squash levels per year and currently over 40 are nationally ranked and 66 have gone to be captains of their respective high schools and colleges over the last 12 years.

The record, however, includes no evidence showing the national rankings of the players coached directly by the beneficiary.

[Redacted] Director, College Racquet Club, Bronxville, New York, states: “[The beneficiary] worked here for a few years as our squash instructor. He brings much experience and knowledge of the game to his students. He worked with both adults and juniors.”

[Redacted], Executive Director, Metropolitan Squash Racquets Association, Huntington Station, New York, states:

[The beneficiary], as an instructor, has been an integral part of helping grow the Junior Development program of Squash in the New York area. He has been giving lessons throughout the years and has helped conduct and coordinate the Metropolitan Squash Racquets Association’s ongoing squash clinics.

The record, however, includes no evidence showing that any of the players directly under the beneficiary’s tutelage have won nationally or internationally recognized prizes or awards as opposed to local junior-level competitions.

The petitioner has not established that the beneficiary meets this criterion.

Documentation of the alien’s membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields.

In order to demonstrate that membership in an association meets this criterion, the petitioner must show that the association requires outstanding achievement as an essential condition for admission to membership. Membership requirements based on employment or activity in a given field, minimum education or experience, standardized test scores, grade point average, recommendations by colleagues or current members, or payment of dues, do not satisfy this criterion as such requirements do not constitute outstanding achievements. In addition, it is clear from the regulatory language that members must be selected at the national or international level, rather than the local or regional level. Therefore, membership in an association that evaluates its membership applications at the local or regional chapter level would not qualify. Finally, the overall prestige of a given association is not determinative; the issue here is membership requirements rather than the association’s overall reputation.

The petitioner submitted correspondence confirming the beneficiary’s membership in the Metropolitan Squash Racquets Association and the United States Squash Racquets Association. The record, however, does not include the membership bylaws or the official admission requirements for these associations. There is no

indication that admission to membership in these organizations required outstanding achievement or that the beneficiary was evaluated by national or international experts in consideration of his admission to membership. Thus, the petitioner has not established that the beneficiary meets this criterion.

Published materials about the alien in professional or major trade publications or other major media, relating to the alien's work in the field for which classification is sought. Such evidence shall include the title, date, and author of the material, and any necessary translation.

In order for published material to meet this criterion, it must be primarily about the beneficiary and, as stated in the regulations, be printed in professional or major trade publications or other major media. To qualify as major media, the publication should have significant national or international distribution. An alien would not earn acclaim at the national or international level from a local publication or from a publication in a language that most of the population cannot comprehend. Some newspapers, such as the *New York Times*, nominally serve a particular locality but would qualify as major media because of significant national distribution, unlike small local community papers.¹

The petitioner submitted several newspaper articles from the 1980's discussing the beneficiary's achievements as a squash player. There is no evidence showing that these publications had substantial national readership. Further, the majority of these articles did not include the title, date, and author of the material as required by this criterion. Regarding the articles published in French, the petitioner failed to submit certified English language translations as required by this criterion and the regulation at 8 C.F.R. § 103.2(b)(3). We find that the newspaper articles from the 1980's are not adequate to demonstrate the beneficiary's sustained national acclaim as an instructor or a coach.

A more recent article, dated January 22, 2003 and entitled "Gondwe: Badminton Genius," was not accompanied by evidence showing that it qualifies as major media with a national circulation.

Without evidence demonstrating that the beneficiary has been the primary subject of sustained major media attention, we cannot conclude that he meets this criterion.

Evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field.

In order to satisfy this criterion, the petitioner must show that the beneficiary's coaching contribution has demonstrably influenced the greater field at the national or international level. The aforementioned letters of support, however, reflect that the beneficiary's impact as a coach has been limited to the New York Metropolitan area. There is no comparative evidence (such as national rankings of the beneficiary players) showing that he is among the most influential coaches currently active in the sport of squash. Nor is there evidence showing that a number of top players or coaches from throughout the United States have adopted the beneficiary's particular techniques. In this case, we find that the beneficiary has failed to demonstrate a

¹ Even with nationally-circulated newspapers, consideration must be given to the placement of the article. For example, an article that appears in the *Washington Post*, but in a section that is distributed only in Fairfax County, Virginia, cannot serve to spread an individual's reputation outside of that county.

specific coaching accomplishment that rises to the level of a contribution of major national or international significance. The petitioner has not established that the beneficiary meets this criterion.

In this case, we concur with the director's finding that the petitioner has failed to demonstrate the beneficiary meets at least three of the regulatory criteria at 8 C.F.R. § 204.5(h)(3).

On appeal, counsel for the petitioner states:

The beneficiary in the year 2001 was granted an "O" visa in order to teach and coach squash at the facilities of the present petitioner. The criteria in obtaining an "O" visa is essentially the same criteria as is contained in the present application.

* * *

It seems inconsistent that only four years ago the beneficiary was granted an "O" visa and found to be fully qualified to do the same job in the same position that he is now requesting that the permanent visa be based upon.

While Citizenship and Immigration Services has approved a previous O-1 nonimmigrant visa petition filed on behalf of the beneficiary, EAC0122360085, that prior approval does not preclude CIS from denying an immigrant visa petition based on a different, if similarly phrased, standard. It must be noted that many I-140 immigrant petitions are denied after CIS approves prior nonimmigrant petitions. *See e.g. Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d 25 (D.D.C. 2003); *IKEA US v. US Dept. of Justice*, 48 F. Supp. 2d 22 (D.D.C. 1999); *Fedin Brothers Co. Ltd. v. Sava*, 724 F. Supp. 1103 (E.D.N.Y. 1989). Because CIS spends less time reviewing I-129 nonimmigrant petitions than I-140 immigrant petitions, some nonimmigrant petitions are simply approved in error. *Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d at 29-30; *see also Texas A&M Univ. v. Upchurch*, 99 Fed. Appx. 556, 2004 WL 1240482 (5th Cir. 2004) (finding that prior approvals do not preclude CIS from denying an extension of the original visa based on a reassessment of beneficiary's qualifications).

The AAO is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See e.g. Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988). It would be absurd to suggest that CIS or any agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), *cert. denied*, 485 U.S. 1008 (1988).

Furthermore, the AAO's authority over the service centers is comparable to the relationship between a court of appeals and a district court. Even if a service center director had approved the nonimmigrant petitions on behalf of the beneficiary, the AAO would not be bound to follow the contradictory decision of a service center. *Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 (E.D. La.), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001).

Review of the record does not establish that the beneficiary has distinguished himself as a squash instructor to such an extent that he may be said to have achieved sustained national or international acclaim or to be within the small percentage at the very top of his field. The evidence is not persuasive that the beneficiary's achievements

set him significantly above almost all others in his field at the national or international level. Therefore, the petitioner has not established eligibility pursuant to section 203(b)(1)(A) of the Act and the petition may not be approved.

The burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.